

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BEACON JOURNAL PUBLISHING)	JUDGE PAUL R. MATIA
COMPANY, INC., <i>et al.</i>)	
)	CASE NO. 5:04CV2178
Plaintiffs)	
-vs-)	
)	<u>MEMORANDUM OF OPINION</u>
J. KENNETH BLACKWELL)	<u>AND ORDER</u>
SECRETARY OF STATE <i>et al.</i>)	
)	
Defendants)	

The within matter came on for hearing upon plaintiffs' motion for temporary restraining order (Doc. 4). Plaintiffs move the Court for an order precluding and enjoining the defendants as follows:

- A. From interfering with any Beacon Journal employee or correspondent in the course of newsgathering at any polling place in Ohio on November 2, 2004.
- B. From interfering in any manner with the Beacon Journal's reporters, photographers, other employees or correspondents, or in any way limiting their freedom of movement, including access to or egress from, any polling place in Ohio on November 2, 2004.
- C. From harassing, intimidating or otherwise negatively affecting Beacon Journal reporters,

photographers, other employees or independent contractor journalists as they are performing newsgathering responsibilities in or near any polling place in Ohio, or on public streets or highways leading to polling places.

After notice to the parties, the Court held a hearing on the motion. The Court has reviewed the complaint (Doc. 1), the memorandum in support of the motion (Doc. 4), the affidavits of Karen C. Lefton and M. Charlene Nevada (Appendix A, B) and has considered the oral arguments of counsel.

Plaintiffs seek a declaratory judgment that Ohio Revised Code Section 3501.35 is unconstitutional as applied and enforced by defendants against plaintiffs' employees and that defendants' actions violate their rights under the First and Fourteenth Amendments to the United States Constitution. Ohio Revised Code Section 3501.35 provides in pertinent part:

No person, not an election official, employee, witness, challenger, or police officer, shall be allowed to enter the polling place during the election, except for the purpose of voting.

Further, the complaint demands compensatory damages under 42 U.S.C. § 1983.

Four factors are important in determining whether a temporary restraining order is appropriate: (1) the likelihood

of the plaintiffs' success on the merits; (2) whether the injunction will save the plaintiffs from irreparable injury; (3) whether the injunction would harm others; and (4) whether the public interest would be served by the injunction. *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228(6th Cir. 1985). The test is a flexible one and the factors are not prerequisites to be met, but must be balanced. *Id.* at 1229. In balancing the four considerations applicable to temporary restraining order decisions, the Court holds that equitable relief is not appropriate at this time.

The 2004 election is being held under extraordinary circumstances. More people than ever are expected to vote. The State of Ohio and Summit County have a compelling interest in making sure that voters vote freely and without intimidation. Moreover, the volunteer poll workers must be able to conduct the election process free of the turmoil that could be created by hordes of reporters and photographers from competing media sources. An honest and orderly election must be paramount. The media can perform their First Amendment function almost as well from outside the polling places.

Accordingly, plaintiffs' motion for temporary

restraining order (Doc. 4) is DENIED. However, the Court retains jurisdiction of this matter for further proceedings.

IT IS SO ORDERED.

Date: November 1, 2004

/s/ Paul R. Matia
CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

A copy of this Memorandum of Opinion and Order was filed electronically this 1st day of November, 2004. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. A copy of this Memorandum of Opinion and Order was hand delivered to Jeffrey Hastings, Esq. and Art Marziale this 1st day of November, 2004. A copy of this Memorandum of Opinion and Order was faxed this 1st day of November, 2004, to Sandy J. Rubino, Esq.

/s/ Paul R. Matia
CHIEF JUDGE
UNITED STATES DISTRICT COURT